S.B. CIVIL SECOND APPEAL NO.78/2006

Sohan Lal

vs.

LRs of Moti Lal and Anr.

DATE OF ORDER ::: 01.03.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. BR Mehta, for the appellant.

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Heard learned counsel for the appellant.

The appellant filed a suit for possession against his tenant Moti Lal and impleaded defendant No.2 Vinod Kumar as party on the ground of sub-letting. The trial court dismissed the suit of the plaintiff vide judgment and decree dated 20.9.2001. The first appellate court dismissed the appeal of the plaintiff-appellant by judgment and decree dated 6.12.205. Hence, this second appeal.

Learned counsel for the appellant submitted that the original tenant died during the pendency of the first appeal and none of his family member was carrying on the business with the deceased-tenant,

therefore, the legal heirs of deceased-tenant had no protection under the provisions of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act of 1950' hereinafter). Therefore, on this ground the plaintiff's suit should have been decreed by the first appellate court.

The point raised by the appellant was not raised before the first appellate court nor this can be a ground for eviction in a suit where the original suit was dismissed by the trial court and the appellate court also upheld the finding against the plaintiff about her personal bonafide necessity and on allegation of sub-letting of premises by the tenant to the defendant No.2. In this situation if the plaintiff feels that he is entitled to recover possession from the heir/heirs of original tenant on any of the ground avaialble to the plaintiff he can certainly file a suit on the basis of accrual of new cause of action if it has accrued under law.

In view of the above, no substantial question of law is involved in this appeal. Accordingly, this appeal is hereby dismissed.

(PRAKASH TATIA), J.

Rm/